* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P.(C) 14300/2006

NB SUBEDAR AHIBARAN SINGH ..... Petitioner
Through Mr. C.M. Khanna, Adv.

versus

UNION OF INDIA & ORS. ..... Respondent
Through Mr. Darpan Wadhwa, Adv.

**CORAM:**
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L.BHAYANA

1. Whether reporters of local papers may be allowed to see the Order? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Order should be reported in the Digest? Yes

O R D E R

% 27.08.2007

The Petitioner prays for the issuance of an appropriate writ quashing the Order dated 25.7.2006 by which the Respondents had decided to ignore the legal notice dated 27.4.2006 issued on his behalf. The contention raised therein was that the Army Act, 1950 does not postulate the holding of fresh proceedings/retrial especially where only the punishment had been cancelled; that such proceedings would be hit by the principles of *res judicata.* Perhaps what was intended to be stated was that fresh proceedings would amount to double jeopardy. The legal notice also states that the punishment of "Severe Displeasure (recordable)" was prima facie illegal and without jurisdiction. In the Writ Petition it has been prayed that the Order of Severe Displeasure

(recordable) dated 23.12.2005 should be quashed and that the Petitioner should be granted all consequential benefits including promotion to the rank of Subedar.

We have heard learned counsel for the Petitioner in great detail. In this case the Petitioner had in the context of the Summary Trial Proceedings by the Commanding Officer of the Petitioner been "relieved of all consequences arising out of the Summary Trial" in terms of the Orders dated 20.4.2004 of the Brigade Commander who had cancelled the punishment of "Severe Reprimand" awarded on 11.10.2003. This was followed by letter dated 2.5.2004 informing the Petitioner that he had been attached with 213 Rkt Regt. with effect from 3.5.2004 and that disciplinary proceedings will be initiated against him.

In Reply to Show Cause Notice No.2702/401 dated 9.10.2005 (Annexure P-8 to the Petition) the Petitioner has stated in writing that "The act of indiscipline was on account of my monetary weakness for which I will always regret and feel sorry. ..... This being my first offence, I beg your pardon and request you to give one chance to improve and come upto the expectation and prove my worth".

The impugned Order dated 23.12.2005 passed subsequently is reproduced below:-

CONFIDENTIAL

Case File No. :2702/401 Bde A/3

CENSURE ORDER OF GENERAL OFFICER COMMANDING 16 CORPS TO BE CONVEYED TO JC-

263148X NAIB SUBEDAR (AIG) AHIBARAN SINGH OF 891 MEDIUM REGIMENT

1. I have considered the reply to the show cause notice submitted by JC-263148X Nb Sub (AIG) Ahibaran Singh of 891 Med Regt vide his letter No 263148X/Pers dated 08 Nov 2005.

2. I find the JCO prima facie blameworthy, wherein he ordered No 14367609N Havildar (DS) Roshan Lal to dispatch one jerrican of petrol 87 MT to rear location Janglote with No14376765K Naik (DMT) Lal Chand for his personal vehicle.

3. I, therefore, direct that my 'Severe Displeasure' (Recordable) be conveyed to JC-263148X Nb Sub Ahibaran Singh of 891 Medium Regiment.

Station : Field
Dated : 23 Dec 05

(Sudhir Sharma)
Lt Gen
GOC

The first contention of learned counsel for the Petitioner is that the imposition of the punishment of Censure amounts to being tried for the same offence twice. The submission is ill-founded for the reason that two proceedings are possible in respect of the same offence; firstly, criminal proceedings and secondly administrative proceedings. What has happened in the present case is that the criminal proceedings, that is, Summary Trial Proceedings by the Commanding Officer have been brought to an end on technical grounds despite the fact that the Petitioner has admitted his guilt. We must appreciate that despite the confession the Respondents have been objective enough to

look into the procedural and legal propriety of Summary Trial Proceedings. Having found them not to be in order the punishment has been set aside by the Brigade Commander, and in doing so the Respondents have demonstrated a fairness which is expected of Armed Forces. The distinction between the two proceedings appears to have been lost on the Petitioner. Learned Counsel has sought to rely on the decision in *Chief of the Army Staff -vs- Major Dharam Pal* ***Kukrety***, AIR 1985 SC 703. Reliance has been placed on the enunciation of the law by their Lordships to the effect that "if the finding of a Court-martial even on revision is perverse or against the weight of evidence on record and the finding is not confirmed a fresh trial by another Court-martial is not permissible. ..." However, learned counsel has chosen to gloss over the remaining part of the Judgment which clarifies that "there is no provision in the Army Act or in Rule 14 or any of the other rules of the Army Rules which prohibits the Central Government or the Chief of the Army Staff from resorting in such a case to Rule 14. ..... In such circumstances, to order a fresh trial by a Court-martial could certainly be said to be both inexpedient and impracticable and the only expedient and practicable course, therefore, open to the Chief of the Army Staff would be to take action against the Respondent under Rule 14, which he did. The action of the Chief of the Army Staff in issuing the impugned notice was, therefore, neither without jurisdiction nor unwarranted in law". This case, in fact, supports the action taken by the Respondents.

Learned counsel for the Respondents has rightly drawn our attention to the Judgment of a Single Bench of this Court in *R.K.* ***Gogna*** *-vs- Union of India*, 2001(60) DRJ 505 where ***Kukrety*** was applied. We affirm the findings in ***Gogna*** to the effect that, as held by the Supreme Court in Brig. J.S. Sivia's case, the scheme of the Army Act, Rules and Regulations is that the Award of Censure is a part of the Army Customs enjoying binding force. Administrative action predicated on Army Rule 14 is permissible where the Court-martial is inconclusively decided on technical grounds. It will be also worthwhile to reiterate that the Petitioner has, in fact, pleaded guilty to the offence for which he was charged, and that nevertheless the punishment of Severe Reprimand awarded by the Summary Trial Proceedings was set aside for technical reasons. By letter dated 27.6.2005 the Deputy Judge Advocate General has reported as follows:-

> 3. In view, however, of a serious offence/impropriety having been committed by the JCO and his summary trial having been cancelled by the superior auth on technical grounds, it may be appropriate to take suitable adm action against him in terms of Army HQ letter No 32906/AG/DV-I(P) dated 16 Oct 2000.

The second argument of learned counsel for the Petitioner is that a decision had already been taken to promote the Petitioner on 10.10.2005 (wrongly mentioned as 1.10.2005). It has been pleaded that the Departmental Promotion Board for the year 2006 was held on 8-9.9.2005 and the promotion of the Petitioner was ordered vide Order

dated 10.10.2005. However, on the previous day, that is, 9.10.2005, the Show Cause Notice had already been issued to the Petitioner. Reliance on paragraph 23 of the AHQ Policy letter dated 16.10.2000 is, therefore, of no avail to the Petitioner. The Promotion Orders dated 10.10.2005 would be subject to the outcome of proceedings already put into motion by the Show Cause Notice dated 9.10.2005. In the event, the Petitioner was punished with the impugned Censure, on the administrative side.

It is evident that confusion has been created because the Summary Trial Proceedings as well as the Administrative proceedings have awarded a Severe Reprimand (Recordable). Merely because the Trial have been set aside does not detract from the power of the Respondents to impose appropriate punishment in exercise of their administrative powers. Since the Show Cause Notice had already been issued at the time when the Promotion Orders had been passed, the latter would indubitably be subject to the former.

We, therefore, find no merit in the Petition. Dismissed.

VIKRAMAJIT SEN, J

S.L.BHAYANA, J

AUGUST 27, 2007
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